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Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 71-8431

THE JUDGES FOR THE THIRD JUDICIAL CIRCUIT OF THE STATE OF MICHIGAN,
Plaintiffs-Appellees,
vs.
COUNTY OF WAYNE and THE BOARD OF SUPERVISORS OF THE COUNTY OF WAYNE, BOARD OF AUDITORS OF WAYNE COUNTY, TREASURER OF WAYNE COUNTY,
Defendants-Appellants.

Michigan Supreme Court No. 52,381

AMICUS CURIAE BRIEF OF KENT COUNTY, MICHIGAN, IN SUPPORT OF APPLICATION OF WAYNE COUNTY FOR WRIT OF CERTIORARI

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INTRODUCTION

Kent County is one of the 83 counties in Michigan. It has an interest in the instant matter and will be adversely affected if the opinion of the Michigan Supreme Court is not reversed by this court.

MISNOMER OF CASE

This case is entitled as on the frontispiece. It is a misnomer. The real plaintiff is the Supreme Court of Michigan. The real defendant is the Constitution. The Supreme Court of Michigan was the judge. The Constitution lost.

THE SUPREME COURT OF MICHIGAN IS EXERCISING THE ROYAL PREROGATIVE OF JAMES I AND CHARLES I, AND, THEREFORE, DENIES TO THE STATE OF MICHIGAN A REPUBLICAN FORM OF GOVERNMENT

"To judge all and to be judged by none." This is the essence of the royal prerogative. This was the precise language addressed to the Parliament of Great Britain in 1608 by King James. We do not claim that the Federal Constitution guarantees to the states the traditional separation of powers. We do say that the Federal Constitution prohibits a state or an agency thereof from exercising the royal prerogative.

The Supreme Court of Michigan now asserts that it has the power "to judge all and to be judged by none." It claims in effect that it must have first call on the budgets and appropriations of the counties of Michigan.

In the case at bar, these extra amounts needed for Wayne County alone rose from $200,000.00 in 1968 to an estimated $2,600,000.00 in 1971. Experience of bureaucracies, judicial or otherwise, portends geometric additions each year until the "requirements" of the judiciary will consume the entire revenues of the counties of Michigan. There is no provision for any relief from a judicially determined "requirement." The counties are required to budget, appropriate and tax at the pleasure of the Michigan judiciary. (in reality the Supreme Court of Michigan). How then does this differ from the assertions of James I or Charles I?

They, too, asserted they had the right to order the Parliament to appropriate and tax such sums as they, the sovereigns, determined to be "necessary." Thus, Charles to the Parliament of 1628 said he must have:

> "such supply as to secure ourselves and save our friends from imminent ruin . . . Every man must now do according to his conscience, wherefore if you (which God forbid) should not do your duties in contributing

> what this State at this time needs I must . . . use those other means which God hath put into my hands to save that which the follies of other men may otherwise hazzard to lose. Take not this as threatening, for I scorn to threaten any but my equals, . . . but as an admonition."

Paraphrasing: The King said to the Parliament that it had the duty to pay him such sums as he saw fit to carry on his duties as he saw them and that it was not his business to worry over where or how the sums were "appropriated and budgeted." It was against these concepts that Sir Edward Coke in the Parliament of 1608-1610 and while sitting as the chief justice of the Court of Common Pleas told King James: "When an act of Parliament is against common right and reason, the common law will control it and adjudge such action to be void." The common law was above the Parliament. The common law was above the king. See *Bonham's case*, Coke 8 Rep. 116-121, (1610). Bonham also laid down the proposition which has since been accepted by all the common law countries of the world that no man should be a judge and a party to a suit. Yet, in this case as we have seen, the Supreme Court of Michigan is the plaintiff and the Supreme Court of Michigan is the judge.

DENIAL OF THE GREAT WRIT

But even worse: Suppose a county should refuse to appropriate and budget all that the Supreme Court of Michigan decided was "necessary." Bench warrants will be issued and several county commissioners committed to the common jail until they relent and do that which the court has commanded. And is that not exactly what King Charles did in 1626? See *Darnel's case* 3 State Trials, 1-169 (popularly known as the Case of the Five Knights), (1627-1628). Habeas corpus was denied the five knights. Habeas corpus will be denied the county commissioners because they will be imprisoned by the one state agency — the judiciary — that has the power to grant the writ.

Not only will the great writ runneth not, there will be no writ at all. Those words of Sec. 39 of the Magna Carta, the touchstone of our liberties and of our political heritage, will become meaningless and negated.

> "No freeman shall be taken or imprisoned, or disseised, or outlawed, or banished, or any ways destroyed, nor will we pass upon him, nor will we send upon him, unless by the lawful judgment of his peers, or by the law of the land."

NO WRIT ~~AT~~ ALL!

These words must be anathema to a free society. They are intolerable in a political democracy. Unless this court act, the great guaranties of Magna Carta and of our own Constitution will be lost.

The thrust of this case, the gravamen of this case is that a Republican form of government and unlimited and unchecked monarchial powers are inconsistent. If the Supreme Court of Michigan can claim and exercise the royal prerogative, the people of Michigan can have no Republican form of government. One need not wear the crown and bear the scepter to be a monarch. A black robe will suffice.

APOLOGIA

We do not deny that the judiciary of Michigan, indeed the courts of all the states and of the United States are facing serious problems with respect to the equal administration of justice. In many cases, the judiciary has been the financial stepchild of the legislatures and the Congress. If the courts are to continue to receive the respect of the people whom they serve, improvements in the administration of justice will have to be made. This will undoubtedly mean the appropriation of larger sums so that the courts may be properly staffed to carry out their constitutional functions. But to attain that goal by

destroying our basic liberties is akin to throwing the baby out with the bath water.

CONCLUSION

Since at least 1301 in the reign of King Edward I, kings and parliaments have used the excuse of "urgent necessity," "practicably necessary," "reasonably necessary," and even just "necessary" to justify actions contrary to the common law. As late as 1964, the Congress of the United States gave to the Executive the power to authorize and execute "to take all necessary steps in Southeast Asia." This was the Gulf of Tonkin Resolution. When courts or parliaments or presidents or kings use the words of "necessity," they have throughout our long history been words of great evil. Who indeed shall guard the guards?

RELIEF SOUGHT

That a writ of certiorari be granted and that this court hear this case upon the merits.

Respectfully submitted,

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No. 71-843

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Petitioners-Defendants,

v.

JUDGES FOR THE THIRD JUDICIAL CIRCUIT OF THE STATE OF MICHIGAN
Respondents-Plaintiffs.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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